

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE**

**IN THE MATTER OF
KARL D. HAZZARD,**

Grievant,

v.

**DEPARTMENT OF CORRECTION,
Agency.**

DOCKET NO. 98-01-141

**DECISION ON MOTION
TO DISMISS**

BEFORE Katy K. Woo, Chairperson; Robert Burns, Vice Chairperson; Dallas Green, John F. Schmutz, Esquire, and John W. Pitts, Members, constituting the entire Board and a lawful quorum under 29 *Del. C.* § 5908(a).

BACKGROUND

This is a grievance filed on January 20, 1998 with the Merit Employee Relations Board ("MERB" or "Board") by Correctional Officer Karl D. Hazzard arising out of his employment with the Department of Correction ("Department" or "DOC"). This grievance pertains to Officer Hazzard's change in assignment from V building to T1 building at the Delaware Correctional Center ("DCC"). Officer Hazzard alleges that his movement from one building to the other was in retaliation for and the result of a letter he wrote to Internal Affairs regarding an unspecified problem with the Warden at DCC. The Department moved to dismiss this matter on February 24, 1998, and a written response was provided to the Board by Officer Hazzard on March 23, 1998. Oral argument was scheduled and conducted on the Motion to Dismiss on June 11, 1998.

The Department's position is that Officer Hazzard's transfer is a matter covered in whole or in part by the collective bargaining agreement between the Delaware Correctional Officers

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Association ("DCOA" or "Union") and DOC and which is therefore outside of the jurisdiction of the Board to address pursuant to 29 Del. C. § 5938(d). Simply stated, the DOC position is that the Board has no jurisdiction over a change in the assignment of a Correctional Officer, since such transfers are the exclusive purview of the collective bargaining agreement with DCOA.

Grievant's position is that he is not grieving the right of the DOC to move him, so the DCOA contract does not apply. He argues that he was moved for a specific reason, specifically in retaliation for the letter he wrote to Internal Affairs concerning the Warden.

DISCUSSION

Upon consideration of the Motion, the Grievant's written response, and the matters raised at the oral argument on the Motion to Dismiss, the Board concludes that Officer Hazzard correctly agrees with the DOC position that the transfer of a Correctional Officer is a matter which is covered in whole or in part by the collective bargaining agreement and outside of the purview of the Merit Rules and the jurisdiction of the MERB. *See Sullivan v. Local Union 1726 of AFSCME*, Del. Supr., 464 A.2d 899 (1983).

Officer Hazzard seeks to avoid dismissal of his appeal to the MERB by asserting that, while he is aggrieved by the transfer and wants it reversed, his "real" complaint is the reason for the transfer and not the transfer itself.

The Board, with all five members considering the matter, unanimously concludes that this grievance is indeed one of the transfer of an employee and thus covered and governed by the Collective Bargaining Agreement. Matters which are covered in whole or in part by the Agreement are to be processed under that Agreement and not under the Merit Rules. Merit Rule No. 1.0100 and 29 Del. C. § 5938(d).


ORDER

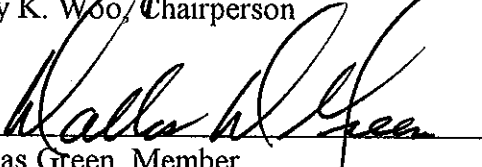
The Motion to Dismiss filed by the Department is **GRANTED** for the reasons set forth above.


The grievance is **DISMISSED** for lack of jurisdiction.

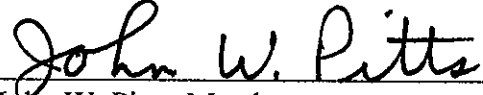
BY ORDER OF THE BOARD:


Katy K. Woo, Chairperson


Robert Burns, Vice-Chairperson

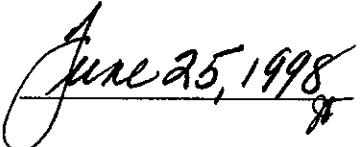

Dallas Green, Member

NOT AVAILABLE FOR SIGNATURE
John F. Schmutz, Esquire, Member 


John W. Pitts, Member

APPEAL RIGHTS

The rights of the parties to appeal a final order of the Board are set forth in 29 Del. C. § 5949(b). All appeals to the Superior Court shall be by the filing of a Notice of Appeal with the court within thirty (30) days of the employee being notified of the final action of the Board.

Mailing Date: 

Distribution:

Original: File

Copies: Grievant

Agency's Representative

Merit Employee Relations Board

Katy K. Woo, Chairperson

Robert Burns, Vice Chairperson

Dallas Green, Member

John F. Schmutz, Esquire, Member

John W. Pitts, Member

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